

### **IC 27-1-3.1**

#### **Chapter 3.1. Examinations**

### **IC 27-1-3.1-1**

#### **Commissioner**

Sec. 1. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-2**

#### **Company**

Sec. 2. As used in this chapter, "company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-3**

#### **Department**

Sec. 3. As used in this chapter, "department" refers to the department of insurance of Indiana.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-4**

#### **Examiner**

Sec. 4. As used in this chapter, "examiner" means any individual or firm authorized by the commissioner to conduct an examination under this chapter.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-5**

#### **Insurer**

Sec. 5. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-6**

#### **NAIC examiner's handbook**

Sec. 6. As used in this chapter, "NAIC examiner's handbook" means the Examiners' Handbook adopted by the National Association of Insurance Commissioners.

*As added by P.L.26-1991, SEC.5.*

### **IC 27-1-3.1-7**

#### **Person**

Sec. 7. As used in this chapter, "person" means any individual, aggregation of individuals, trust, association, partnership, limited liability company, or corporation, or any affiliate of these entities.

*As added by P.L.26-1991, SEC.5. Amended by P.L.8-1993, SEC.410.*

### **IC 27-1-3.1-8**

#### **Procedure**

Sec. 8. (a) The commissioner or any of the commissioner's examiners:

(1) may conduct an examination under this chapter of any company as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and

(2) shall, at a minimum, conduct an examination of every insurer licensed in Indiana at least once every five (5) years.

(b) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC examiner's handbook.

(c) For purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(d) In lieu of an examination under this chapter of any foreign or alien insurer licensed in Indiana, the commissioner may accept an examination report on such company as prepared by the insurance department of the company's state of domicile or port-of-entry state until January 1, 1994. After January 1, 1994, those reports may only be accepted if:

(1) the insurance department that prepared the report was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(2) the examination is performed with the participation of one (1) or more examiners who are employed by an accredited State Insurance Department and who after a review of the examination work papers and report state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

*As added by P.L.26-1991, SEC.5. Amended by P.L.1-1992, SEC.144.*

### **IC 27-1-3.1-9**

#### **Warrant; access to information; refusal; penalties; subpoenas; oaths; order to appear; evidence**

Sec. 9. (a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the NAIC examiner's handbook. The commissioner may also employ such other guidelines or procedures as the commissioner considers appropriate.

(b) Every company or person from whom information is sought, and the officers, directors, and agents of the company or person, must provide to the examiners appointed under subsection (a) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents within the company's control, to submit to examination or to comply with any reasonable written request of the examiners, or the failure of any company to make a good faith effort to require compliance with such a request, is grounds for:

- (1) suspension;
- (2) refusal; or
- (3) nonrenewal;

of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. The commissioner may proceed to suspend or revoke a license or authority upon the grounds set forth in this subsection under IC 27-1-3-10 or IC 27-1-3-19.

(c) The commissioner and the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to an examination conducted under this chapter. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

(e) This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

*As added by P.L. 26-1991, SEC.5. Amended by P.L. 130-1994, SEC.8; P.L. 116-1994, SEC.12.*

### **IC 27-1-3.1-10**

#### **Reports**

Sec. 10. (a) All examination reports shall be comprised of only:

- (1) facts:

(A) appearing upon the books, records, or other documents

of the company; and

(B) ascertained from the agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning the affairs of the company; and

(2) conclusions and recommendations that the examiners find reasonably warranted from those facts.

(b) No more than sixty (60) days after the completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that affords such company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report. The thirty (30) day period may be extended if the commissioner, in the commissioner's sole discretion, determines that an extension is appropriate or necessary. *As added by P.L.26-1991, SEC.5. Amended by P.L.130-1994, SEC.9; P.L.116-1994, SEC.13.*

#### **IC 27-1-3.1-11**

##### **Review of report; order**

Sec. 11. (a) Within thirty (30) days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(1) adopting the examination report as filed or with modification or corrections;

(2) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile the report under this chapter; or

(3) calling for an investigatory hearing with no less than twenty (20) days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(b) If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation.

*As added by P.L.26-1991, SEC.5.*

#### **IC 27-1-3.1-12**

##### **Orders; findings and conclusions; appeal; hearing**

Sec. 12. (a) All orders entered under section 11(a) of this chapter shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals.

(b) Any order entered under section 11(a) of this chapter shall be considered a final administrative decision that may be appealed under IC 4-21.5-5, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file an affidavit stating that each director has received a copy of the adopted report and related orders.

(c) Any hearing conducted under section 11(a)(3) of this chapter by the commissioner or an authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of the hearing, the commissioner shall enter an order under section 11 of this chapter.

*As added by P.L.26-1991, SEC.5. Amended by P.L.130-1994, SEC.10; P.L.116-1994, SEC.14.*

### **IC 27-1-3.1-13**

#### **Hearing**

Sec. 13. (a) The commissioner may not appoint an examiner as authorized representative to conduct a hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record.

(b) This section does not require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(c) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. The commissioner, the department, and the company may cross-examine witnesses. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

*As added by P.L.26-1991, SEC.5. Amended by P.L.130-1994, SEC.11; P.L.116-1994, SEC.15.*

### **IC 27-1-3.1-14**

#### **Confidentiality of report; public inspection; disclosures**

Sec. 14. (a) Upon the adoption of an examination report under section 11(a)(1) of this chapter, the commissioner shall continue to hold the content of the examination report as confidential information for a period of thirty (30) days except to the extent provided in section 10(b) of this chapter. Thereafter, the report shall be open for public inspection.

(b) This chapter does not prevent or prohibit the commissioner from disclosing the content of an examination report, preliminary examination report, or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of Indiana or any other state or agency of the federal government at any time, if the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions authorized by law.

(d) This chapter does not limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, consider appropriate.

*As added by P.L.26-1991, SEC.5. Amended by P.L.130-1994, SEC.12; P.L.116-1994, SEC.16.*

#### **IC 27-1-3.1-15**

##### **Working papers, recorded information, and documents; confidentiality**

Sec. 15. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination under this chapter are confidential for the purposes of IC 5-14-3-4, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in section 14 of this chapter. However, access may also be granted to the National Association of Insurance Commissioners. Those parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

*As added by P.L.26-1991, SEC.5.*

#### **IC 27-1-3.1-16**

##### **Appointment of examiner; conflict of interest; support staff**

Sec. 16. (a) No examiner may be appointed by the commissioner if that examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. However,

this section does not automatically preclude an examiner from being:

- (1) a policyholder or claimant under an insurance policy;
- (2) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) an investment owner in shares of regulated diversified investment companies; or
- (4) a settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the commissioner may periodically retain on an individual basis qualified actuaries, certified public accountants, and other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

*As added by P.L.26-1991, SEC.5.*

#### **IC 27-1-3.1-17**

##### **Liability of commissioner, authorized representative, or examiner; attorney's fees**

Sec. 17. (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action may arise, and no liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if that act of communication or delivery is performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection (a).

(d) A person identified in subsection (a) is entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of that person's activities in carrying out the provisions of this chapter and if the court finds the action was frivolous, unreasonable, groundless, or litigated in bad faith.

*As added by P.L.26-1991, SEC.5.*

#### **IC 27-1-3.1-18**

##### **Financial analysis ratios; written requests; examination synopses; confidentiality**

Sec. 18. (a) The commissioner shall provide any financial analysis ratios computed by the Insurance Regulatory Information System of the National Association of Insurance Commissioners within five (5) business days after receiving a written request for those ratios.

(b) All examination synopses concerning insurance companies that are submitted to the department by the Insurance Regulatory Information System of the National Association of Insurance Commissioners are confidential and may not be disclosed by the department.

*As added by P.L.26-1991, SEC.5.*